

July 17, 2018

Exhibit 16

Dear Water Policy Interim Committee,

The Clark Fork Task Force operated under §85-2-350 Montana Code Annotated to update the State Water Plan and to consult the DNRC on water management. The Task Force carried out a number of activities and served as the basin advisory committee for the Montana State Water Plan. After the Water Plan was published in 2015, the Clark Fork Task Force no longer received funding through the Montana DNRC.

In October 2015, stakeholders of the Clark Fork Basin desired to play a role in implementing elements of the Basin and State Water Plans, and approached MWCC to assist in revisioning the Task Force. MWCC hosted three meetings which established that a basin-wide coordinating entity provides added value to on-the-ground natural resources management. Stakeholders discussed and approved a Charter and elected an Executive Committee and three working groups (Communication, Data, and Natural Systems Health and Water Availability). The Council also heard from community members in the Kootenai who agreed to be included in the Council.

During this revisioning process, the 2015-2016 interim session was under way and the Water Policy Interim Committee requested the group's input on revising or eliminating §85-2-350, MCA. The nascent Council ultimately requested that the Water Policy Interim Committee take no action and work with the Council in the 2018 Interim on drafting a replacement statute.

A key observation that was made during the interim session discussions was that any revisions to the statute should address the whole state, not just the Clark Fork Basin. There was substantial interest in the concept of implementing the State Water Plan. Council stakeholders and watershed groups at large had concerns about creating a structure that would overlay, perhaps undermine, and possibly compete with the capacity of existing community based natural resource organizations.

Since WPIC decided not to pursue revisions, the Council has worked with Montana Watershed Coordination Council to maintain the relationship with the 2017-2018 WPIC Interim Committee and begin the process of revising §85-2-350, MCA.

MWCC currently recognizes 63 watershed groups in the directory and State of the Watersheds Report. This list includes:

- Non profit organizations
- Conservation districts
- Conservation district councils
- Municipalities
- Volunteer organizations without a tax status

Although these groups vary in structure, the approach to natural resource management unifies their efforts. Termed the "Watershed Approach," these entities operate with the following shared principles:

1. Hydrologic boundaries,
2. Inclusivity of natural resource concerns within a watershed,
3. Ground up model of self governance,
4. Consensus driven,
5. Local leadership,
6. Connection to implementing the State Water Plan and basin water plans, and
7. Some degree of regional coordination.

Codifying the watershed approach in §85-2-350, MCA, would maintain the statutory legitimacy of the Clark Fork and Kootenai River Basins Council as it currently exists. Such a revision would also provide the following benefits:

- Assist DNRC in water plan implementation,
- Identify entities as a vehicle for implementing State Water Plan,
- Promote locally led and voluntary natural resource management,
- Prevent competition for state capacity and resources, and
- Increase opportunities to leverage state and private resources to support local natural resource managers statewide.

We look forward to exploring the next steps to drafting a revision to §85-2-350, MCA, that is satisfactory for the Water Policy Interim Committee.

Sincerely,

Clark Fork and Kootenai River Basins Council  
Executive Committee Members

Montana Watershed Coordination Council

Ethan Kunard, Board Chair

Attachments: Proposed Timeline

**NOTE:** Deletions are in yellow and *additions are in italics*.

## State Water Plan

**85-1-203. State water plan.** (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may:

- (a) conduct studies;
- (b) adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies;
- (c) perform research or employ other competent agencies to perform research on a contract basis; and
- (d) hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, with some of these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, utilization, and sustainability of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses.

(3) Sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork & *Kootenai* River basins, submitted to the 2015 legislature, and updated at least every 20 years. These basin wide plans must include:

- (a) an inventory of consumptive and nonconsumptive uses associated with existing water rights;
- (b) an estimate of the amount of surface and ground water needed to satisfy new future demands;
- (c) analysis of the effects of frequent drought and of new or increased depletions on the availability of future water supplies;
- (d) proposals for the best means, such as an evaluation of opportunities for storage of water by both private and public entities, to satisfy existing water rights and new water demands;
- (e) possible sources of water to meet the needs of the state; and
- (f) any legislation necessary to address water resource concerns *including water permitting in* these basins;
- (g) *Identify data gaps and water management issues;*
- (h) *Identify ways to prevent invasive species;*
- (i) *Provide a forum for all people to communicate about water issues.*

(4) (a) The department shall create *a* or utilize an existing water user basin council in both the Yellowstone, and Missouri and Clark Fork & Kootenai River basins that is inclusive and representative of all water interests in those basins. For the Clark Fork River basin, the department shall continue to utilize the Clark Fork River basin task force established pursuant to **85-2-350**.

(b) The councils in the Missouri and Yellowstone river basins are to consist of members of watershed groups, water user organizations, irrigators, county and city officials, Tribes, and water specialists.

(c) Each council may have up to 20 members.

(d) Each water user council shall make recommendations to the department on the basin wide plans required by subsection (3), and on the implementation of the plans.

(5) Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.



(6) The department shall submit to the water policy committee established in **5-5-231** and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(7) The legislature, by joint resolution, may revise the state water plan.

(8) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(9) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(10) In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in **5-5-231** and solicit the advice of the water policy committee in carrying out its duties under this section.

**History:** En. Sec. 5, Ch. 158, L. 1967; amd. Sec. 138, Ch. 253, L. 1974; R.C.M. 1947, 89-132.1(1) thru (5); amd. Sec. 18, Ch. 573, L. 1985; amd. Sec. 1, Ch. 381, L. 1989; amd. Sec. 417, Ch. 418, L. 1995; amd. Sec. 70, Ch. 545, L. 1995; amd. Sec. 1, Ch. 404, L. 2009; amd. Sec. 7, Ch. 122, L. 2015.

July 17, 2018

Water Policy Interim Committee 2017-18  
Montana Legislature

Dear Members of the Montana Water Policy Interim Committee,

The Executive Committee of the Clark Fork and Kootenai River Basins Council respectfully requests the Water Policy Interim Committee to sponsor legislation to revise MCA 85-1-203, the State Water Plan statute. The Council had provided a letter to WPIC at its January 2018 meeting addressing our interest in seeing MCA 85-2-350 (authorizing the Clark Fork Task Force) revised chiefly to replace the "Clark Fork Task Force" with "basin council." Since that time the Council has engaged with key DNRC personnel who indicated that it might be best for such a revision or repealer bill to come from the agency, but we have recently learned that this will not occur but that the DNRC is very likely to support legislation that effectively replaces the Task Force with a basin council.

Following this objective, Council members Verdell Jackson and myself came to realize that revisions to MCA 85-1-203 (State Water Plan statute) to eliminate reference to the CFTF should include language addressing representation of different stakeholders, address tasks and the councils' roles in the water planning and implementation processes, and that repealing 85-2-350 (CFTF Statute, originally introduced by Senator Jackson) will greatly simplify the statutes.

We are attaching a draft revision of 85-1-203, with deletions highlighted in yellow and insertions in bold italics, for consideration of WPIC. The Executive Committee of the Clark Fork and Kootenai River Basins Council appreciates your consideration of this request.



Dave Shively, Executive Committee Member  
Clark Fork and Kootenai River Basins Council